

**TESTIMONY IN SUPPORT OF HB 75
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Department of Environmental Quality

**Senate Natural Resources Committee
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Mr. Chairman and members of the committee, my name is John Arrigo and I am administrator of the DEQ Enforcement Division. I would like to thank Rep. Van Dyk for sponsoring HB 75.

Montana has a variety of funds to clean up wastes and pollution. These include the Environmental Quality Protection Fund and the Orphan Share for state superfund sites; the Petroleum Tank Release Compensation Fund for underground storage tank leaks; the Junk Vehicle fund to remove and recycle abandoned and junk vehicles; the Governor's Environmental Contingency Account for emergency cleanups; and the Environmental Rehabilitation and Response Account for mine reclamation and cleanup of hazardous waste where there is no responsible party. However, there is no fund available clean up illegal solid waste.

HB 75 amends the Environmental Rehabilitation and Response Account, or ERRRA to allow the Department to spend ERRRA funds to cleanup solid waste sites.

The DEQ proposes HB 75 as an effort to help expedite clean up illegal solid waste sites. In a couple past solid waste enforcement cases, the DEQ was successful in asking a district court judge to order the responsible party to remove and dispose of illegal solid waste and junk vehicles. However, the responsible parties did not have the money or desire to return to compliance, even though they were under a court order.

I have handed out photos of two poster-child sites that led to the Department to propose this legislation. The first case in Dillon. We had been working with the responsible party as early as 2003 to voluntarily clean up his illegal solid wastes and junk vehicles. The party was unwilling, so we filed a complaint in district court in early 2005 and the judge ordered the responsible party to cleanup the wastes. But he did not comply because he believed the materials were not wastes and he was going to use the materials as parts for other projects or to earn money through recycling. This argument went on for several years until the judge toured the site and finally decided that most of the materials were in fact wastes and had to be removed. Cleanup finally started 2008.

If the Department had the authority to spend ERRA money, it would have asked the judge to put a tighter timeline on cleanup. If the responsible party did not comply, we would ask the judge to allow DEQ to cleanup the site. If this would have happened, the wastes would have been cleaned up sooner and we could have avoided several years of litigation.

The second example is near Butte where an individual accumulated acres of solid wastes and junk vehicles. Again, as a result of DEQ's enforcement action, the judge ordered the responsible party to cleanup the wastes. However the party could not afford to pay for cleanup and walked away. The Department asked the judge to allow DEQ to take possession of the wastes so it could remove them. The department hired a contractor who was willing to remove the junk vehicles and scrap metal in exchange for the salvage value of the metal. However, Butte-Silver Bow County spent over \$6,000 out of their community decay fund to remove and dispose of the solid waste. If DEQ had the authority to spend money from ERRA, we could have reimbursed Butte-Silver Bow County for their expenses.

It is also important to note, that although junk vehicles are usually located at these sites, the purpose of HB 75 is to obtain money to remove solid wastes, and does not affect how we handle junk vehicle sites. The junk vehicle account has money to pay for cleanup. Also the price of scrap metal often covers the cost of removal and recycling junk vehicles and scrap metal.

The bill only amends Section 75-1-110(3)(c) on the top of page 2.

Section 75-1-110(3) lists what ERRA funds must be used for. The primary purpose of HB 75 is shown on page 2, line 2 where solid wastes are added to the lists of wastes that may be cleaned up with ERRA money.

(3)(c) is also amended to insert statutory definitions for hazardous waste and hazardous or deleterious substances. A question came up in House Natural Resources about the difference between a hazardous waste and a hazardous or deleterious substance. Both types of wastes are detrimental to human health and the environment, but the main difference is in how they are regulated. The Hazardous Waste Act regulates the active generation, transportation, treatment, storage and disposal of hazardous wastes. The state superfund law focuses on cleaning up sites with historic contamination from hazardous or deleterious substances.

The stricken language in Section 4 was a cost recovery process that the House Natural Resources Committee thought was too aggressive and we had to have it amended out to get the bill out of committee.

In summary, the proposed amendments to ERRA provide DEQ with an additional tool to help obtain compliance with the law and to cleanup the environment. However, we do not intend to become the aesthetics police and cleanup everyone's back yard litter piles. Also, because one man's waste is another man's treasure, we cannot go on to any site and start removing wastes. If we did the Department could be potentially liable for a takings law suit. Rules are being promulgated that would restrict the DEQ's solid waste cleanup activities to sites where the Department is authorized by the court to cleanup a site, or cleanup was allowed under a stipulation signed by the land owner.

There is no fiscal impact associated with HB 75. The Department does not request additional funding or personnel. Revenue comes from Septage Pumper, Opencut and Metal Mine penalties and unclaimed reclamation bonds. The Department is authorized to spend up to \$99,000 each year from ERRA. The current balance in the account is \$325,000. Past expenditures have included \$55,000 to help put out the Columbus tire fire in 2006 and about \$6,000 to finish reclamation on a small coal mine where the bond was inadequate. This fiscal year, the Department expects to spend about \$90,000 of ERRA money to help the Centerville School address its public water supply that is contaminated with sewage.

Future expenditures depend upon the problems that are discovered. But the Department estimates that spending ERRA money to clean up the occasional solid waste site may cost \$25,000 to \$50,000 per biennium. And no additional revenue is need at this time.

With that explanation, I respectfully request that the committee pass HB 75. I am available if you have any additional questions.